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No. 82-1991

In THE SUPREME COURT

OF THE

UNITED STATES

OCTOBER TERM, 1982

CATHERINE ELIZABETH SCHWARZ
Petitioner,

vs.

COASTAL RESOURCES MANAGEMENT, ET AL.
Respondents.

****

PETITION FOR A WRIT OF CERTIORARI
TO THE U.S. COURT OF APPEALS
FOR THE FIRST CIRCUIT

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CATHERINE ELIZABETH SCHWARZ, PRO SE

PRESIDENT, CLEAN COVE COMMITTEE, Inc.

374 SEA VIEW DRIVE, WARWICK, R.I. 02886

Tel. 1-401-738 7648

QUESTIONS PRESENTED

1. Why, when another area rejected this sewage pumping station, as they have the right to do, is it than forced on our area, but we aren't allowed to reject it, even though the other side is where it is needed to help clean up their polluted water?

2. With clean water so vitally important, why haven't the courts below looked into these fraudulent permits and stress the fact that clean water should be kept clean, by confronting the violators and making them mend their ways?

3. Can a citizen be white, and of a majority race and born in United States have some equal and civil rights, also?

4. Our rights have been violated, both civil and Constitutional, crimes have been committed against us, there are remedies in the law, will it be implemented?

5. Does using over 2 million dollars of Clean Water Act Funds to bring millions of gallons of sewage to clean water seem like an atrocious waste of your money?

6. Petitioner has Expert Testimony and Clean Water Act needs publicity, can she be allowed an Oral Argument.

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Loveladies v. Raab.....28.A,30.A

Marathon Oil Co. v. EPA.....30.A

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U.S. v. Phelps Dodge Corp.....29.A

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Civil Rights for Equal Justice, and related law determined in this case...

CFR	Title	18	Ch.	VI	WRC	Part 740.7
CFR	"	"	"	"	"	" 725 ALL
CFR	"	"	"	"	"	" 714 ALL
CFR	"	33	"	II	COE	" 240 ALL
CFR	"	"	"	"	"	" 236,238
CFR	"	"	"	"	"	App.D.Pg.508
CFR	"	40	"	I	EPA	Part 427 ALL
CFR	"	"	"	"	"	Sec. 20.8
CFR	"	1	"	II	OFR	Part 51 ALL
CFR	"	18	"	VI	Civ Rts	" 705 ALL

ABBREVIATIONS USED.

Water Resources Council.....WRC

Army Corps of Engineers.....COE

Environment Protection Agency.....EPA

Office of Federal Register.....OFR

Civil Rights.....Civ Rts

Coastal Resources Management Council.CRMC

Clean Water Act.....CWA

Fed. Emergency Management Agency..FEMA

Director of Environmental Management.....DEM

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Federal Water Pollution Control Act,

1972 and its Amendments, Clean Water Act'77

CWA Sec.115 ALL.

CWA Sec.201.(e),(f),(g)(2)(A),(3),(4),(5),

CWA Sec.301.(1)(C). (6),(h)(3).

CWA Sec.302. Water Quality Limitations.ALL

CWA Sec.303. " " Implementation.ALL

CWA Sec.304. (a)(1),(A),(2)(B),(C),(D),(3),
(c)(h),(j)(B)(C)(D).

CWA Sec.305. Water Quality Inventory. ALL

CWA Sec.306. (b)(1)(A). ASBESTOS is a
carcinogenic.

CWA Sec.307.(a)(1). Sec.317.(a).

CWA Sec.309.(a)(1),(a)(2),(b),(c)(1)(2).

CWA Sec.401.(a)(1),(2),(5),(6)(b).

CWA Sec.402.(b)(1)(A)(C)(i)(ii)(iii)(b)(3)
(7),(i),(j),(k).

CWA Sec.403.(a),(c)(1)(A)(B)(C)(E)(F),(2).

CWA Sec.502.(5). Sec.509.ALL Sec.5

CWA Sec.511.(c)(1),(c)(2)(A).

CWA Sec.505.Citizen Suits. (a)(1)(ii)(A)(2)
(e),(f)(1)(2)(5)(6).

TABLE OF AUTHORITIES

This criteria has all been taken from the "CLEAN WATER ACT SHOWING CHANGES MADE BY THE 1977 AMENDMENTS, 95th Congress, 1st Session, Committee Print, Printed for the use of the Senate Committee on Environment and Public Works, Serial No. 95-12.

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Clean Water Act...7,2.A,3.A,4.A,7.A,8.A, 9.A,10.A,14.A,19.A,27.A,28.A.

Coastal Zone Management Act.....27.A.

Exhibits.....6,10.A,11.A,12.A,25.A.

Floodplain laws..9.,22,23,24,26.A,27.A.

Water Resources.....10,11,12,22,23.
(Civil Rights)

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Note; The same U.S. District Court issued a different and conflicting verdict in C.A #77-0374 before Judge Francis J.Boyle, for the District of R.I. The Mayor of the city was made accountable for the pollution. Entered on page A-3 of Petitioner's Preliminary Injunction Action C.A.80-1122.

No._____

In the UNITED STATES SUPREME COURT

October Term, 1982

CATHERINE ELIZABETH SCHWARZ
Petitioner,

vs.

COASTAL RESOURCES MANAGEMENT,ET AL.
Respondents.

PETITION FOR A DIRECT APPEAL
TO THE UNITED STATES SUPREME COURT

To the Honorable Justices of the Supreme Court of the United States;

Your Petitioner, Catherine Elizabeth Schwarz, respectfully prays for a direct appeal of the judgment of the U.S. Court of Appeals for the First Circuit (Civil Action 82-1534) entered March 8,1983, rehearing denied, and appeal denied January 26,1983 by unpublished decision, and dismissal by U.S. District Court for R.I. entered June 30,1982; because this case raises new and important legal issues.

OPINIONS

Opinions of lower courts are reproduced in the Appendix.

JURISDICTION

This court's jurisdiction is invoked under 28 USC Sec. 2101, 1254, and 33 USC Sec. 1364, 1319 and 1365, this being a petition arising from a false permit being issued by the Respondents, causing a Citizen's Suit to be brought against them. The petition is filed within 90 days of March 8, 1983.

CONSTITUTIONAL PROVISIONS AT ISSUE

ARTICLE III Sec. 2.

The judicial power shall extend to all cases, in law and equity, arising under this constitution and the laws of the U.S.

AMENDMENT I.

Congress shall make no law abridging the right to petition the government for a redress of grievances.

AMENDMENT VII.

In suits at common law, where the value in controversy shall exceed twenty dollars, the right of trial by jury shall be preserved.

AMENDMENT IX.

The enumeration in the Constitution, of certain rights, shall not be construed to deny or disparage others retained by the people.

STATEMENT OF THIS CASE

This is a landmark case, so has no precedent. To enforce the Floodplain Regulations and the prevention sections of the Clean Water Act has not been an easy task. The only case histories are ones that attempt to control pollution once it has started, that Petitioner has found.

This is a very important case because clean water is important to all,our lives depend on it. Yet, no one is implementing this great body of legal work that is positively beautiful in it's concept.

Petitioner feels greatly honored to have been given this task to do, and it has taken over 5 years of my life, so far. Eventually, the Truth will come out. The technical maneuvers,used by the Respondents to continually keep this case from

being properly judicated, will have to come to an end. Though pollution has become very profitable for the local politicians, they also need clean water. Political profiteers are doing the same thing, falsifying documents, misrepresenting certification, buying off lawyers, burying hazardous waste over aquifers, putting nuclear and sewage plants on clean water, everywhere. There is nowhere to run.

Dr. Richard Brooks, Ph.D. of the Environmental Law College at S. Royalton, Vermont called me to congratulate me on making legal history with C.A. 80-1429 and 80-0137, for Preliminary Injunction.

We were only a group of aggrieved people that were the victims of an atrocity and when we had done everything we could think of on a local level, with the run-around our only results, even at EPA in Boston, the people started to get to me and tell me they didn't have a permit and

and then when Respondents went for a permit, the Respondents falsified the findings of facts by saying; Brush Neck Cove was SB water quality, closed to shellfishing, unnavigable, that the project would not degrade the water quality or that the 750 gallons of diesel fuel would not change the chemical balance of this body of water even under most adverse conditions.

Other documentation stated that this site was an A-10 zone, whereas, it is a V-10 zone. The transcript of the Public Hearing, which we got by going all the way to Vermont and Maine, ignored our vote of 72 residents and switched our water quality, again. Wm. Adams, EPA Administrator in Boston, comes from Maine. New York's Water District Chief (with the high grade of drinking water in the world) Richard Tisch and Vermont's Water District Authority, Michele Frome, also, wrote to us and told us the proper procedures. Even California sent us news clippings on Citizen Groups.

Petitioner received help from citizens working in city hall, the state house, the court house, the sewer commission, and now has all the documentation to verify all allegations. Judge Boyle said it was too much for anyone to be able to read, so Petitioner has slimmed it down to 31 Exhibits. 1. Decision for Permit by CRMC has these false findings of facts, (the landscaping was omitted but later replaced in specs for this project, when CLEAN COVE mentioned that 7 ft. link chain fence and 3 strand barb wire was not the landscaping picture presented to us, it is the only obvious thing the layman can see and understand, but it is only lipstick on the corpse, and it is not why we are in court.)

Exhibits 2. through 5. Are the surveys and maps of the R.I. Health Dept. showing the water quality of both coves in question, closures, names of the polluters, and it shows the sewer project profiteers graph, that ignored all the facts and re-

versed the problem area to our clean cove.

33 USC 1365 -- CITIZEN SUIT's (a)(A)(f) gives the power to the citizen to bring a civil action for these acts of fraud in the permit and certification system.

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On March 8,1978, an alleged Public Hearing had only 3 residents of the affected area,and 2 other residents from out side the contested sewer pump site, present. No one in the immediate danger area had ever heard about this hearing or this project. Petitioner found this out by going door-to-door. Mrs. Mary Jackman requested that a petition be drawn up. It was and she signed it. She lives directly across from the sewer pump site. We had over 300 names in a week and went to City Hall and confronted the Mayor Joseph Walsh and City Planner Barbara Sokoloff. We had every seat filled and the foyer and people standing in the back and aisle, approx. 450 people there. Planner Sokoloff said

"Time was running out for Federal funds let them get the money then they would have time to draw up new plans and move the pump."(Petitioner received a letter from Ms. Sokoloff with these same phrases and it is part of our documentation.)

Mayor Walsh sent us all to a meeting with the Sewer Authority the following night even though the Sewer Authority was present at this meeting but would not address us. The sewer authority again put the people off by saying it was a private meeting and they were sent home again, as they arrived, many going right from work without any supper. My husband and I, and 3 other residents had arrived early and so had gone right in and upstairs. Reiner Schwarz read the blueprints and saw no overflow provisions. Fred Hoernle, chief engineer for an International Co., said, "We have 2 overflows, Brush Neck and Buttonwoods Cove". With that my husband left knowing our last clean cove was to be des-

troyed and we would get nothing but the run-around from anyone there.

We continued with the petition and have about 1,000 signatures and addresses of people wanting the sewer pump plans re-thought and alternatives looked into, as the law requires. C.F.R. 33, Ch.II, Sec. 240. States importance of Public involvement in the Floodplain planning, since the residents will be the victims of any malfunction or flood, and the residents do know the area better than people from another area.or country.

The politicians here tried to pass a law banning petitions. That was the only action we got from this city, even though our last shellfishing, finfishing and bathing cove with grade "SA" water and our Public Park is in it's center and is the entire middle peninsula. The taxpayers bought up that land when condos were mentioned in the past.We have 2 Public Parks

and the other one was threatened with sewage from one of our 86 sewage pollution source points (as of 1980). There are more now. We had the only clean beach water tested safe for swimming. So the politicians, ex-Gov. Phil Noel and his group of "Section 8" condo-builders and his totally stacked C.R.M.C. and D.E.M. with Warwick Chairman Barbara Colt, and his other political appointees, just there to say "yes" to any scheme, 90% of them not knowing anything about the environment, have now planned condos for the other polluted Old Warwick Cove side. The problem is that the residents there said they did not want their roads, trees, grass and gardens dug up for the sewers and they rejected the plan totally in Dec. 1977. That is when the sewer pump was resited on our clean water, in total secrecy, against the law and against our civil rights. CFR. Title 18 ch. VI- Water Resources Council. Sec.705.4 (4) and (d).

705.4 Discrimination prohibited.

(a) General. No person in the United States shall on the grounds of race, color or national origin be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination under any program to which this part applies.

(ii) Provide any service or other benefit to a person which is different, or is provided in a different manner from that provided to others under the program;

(iii) Subject a person to separate treatment in any manner relating to his receipt of any service or other benefit under the program;

(iv) Restrict a person in any way in the enjoyment of any advantage or privilege enjoyed by others receiving any service or other benefit under the program;

(vii) Deny a person the opportunity to participate as a member of a planning or advisory body which is an integral part of the program.

(2) A recipient,in determining the type of service or facilities which will be provided,or class of people to whom,or situations in which,such services or facilities will be provided,may not directly or through contractual or other arrangements,utilize criteria or methods of administration which have the effect of subjecting persons to discrimination, or have the effect of defeating or substantially impairing accomplishment of the objectives of the program --

Of course,our area was totally discriminated against because the majority in this area are poor people, and where the sewers are needed are rich people, and,of course, the politicians reaping the benefits of millions in government funds for the Section "8" projects and the sewer projects live on the other polluted cove and the pollution on the Old Warwick Cove was the mandate for sewers. And our cove,Brush Neck and But-

tonwoods is the only cove that had clean water,classified "SA" and it's use safe-guarded for shellfishing,finfishing and swimming. The remaining Warwick coves are all closed to shellfishing,because of septic sewage run-offs. They are all "SB" and "SC" grades of water, with marinas and septic run-offs, except our cove with "SA" water and our Public Park taking up the entire center peninsula,Brush Neck.

The Clean Water Act mandates a survey by the Health Dept. to find out where the clean water is so it can be protected from pollution;not as in this case,get the over 2 million in Water Pollution Control Funds and use it to bring sewage to the only clean cove and pollute that,too. But that was exactly what the profiteering politicians did. Phil Noel says "He laughs all the way to the bank" when questioned by the Providence Journal Bulletin Newspaper about his vast "Section "8" holdings. He is laughing and the rest of the state is

crying. With the highest cancer death rate and ASBESTOS sewer and water pipes being buried in our ground water and ASBESTOS fibers mixing with the sewage and being dumped into our Bay and clam beds and sea food chain. With the shellfishermen having less clean water to shellfish in. The Bay with over 90 sewage overflows is exporting hepatitis in R.I. clams to N.Y. and elsewhere. With people getting colon cancer, and we are now only the second highest, after being 3 years at the top for cancer deaths. A Doctor on T.V. said these deaths are caused by something ingested.

Warwick Water Dept. was about to bid on more ASBESTOS water pipes. The Clean Cove Members wanted to have a sit-down strike at the bid. The water pipes are of a better material for the lucky ones, now. Petitioner has ASBESTOS water pipes since the Sewer Company broke our good water pipes that were in the ground for over

30 years delivering clean, drinkable water, and substituted Asbestos water pipes. The water was so gritty I thought the tea bag broke. We started buying bottled water in 1979 after several attempts by the Water Dept. to clear the lines and could not. So we pay 2 water bills and buy bottled water. A neighbor has had 2 cancer operations in 1981. She was never sick and has lived across from me for 37 years.

Eugene Montecalvo died of a heart attack at age 55. The pump was built in his back yard, as that is what he saw instead of the seascape he had moved there for and 2 years with the roads all cut up and dirt and dust all through his home so he could not even open a window on the hottest days. His last words to me was, "Do not let them get to you. Try and keep your health."

They, the Defendants or Respondents, have quadrupled my taxes, sent the minimum housing to pester me about a shed and an

antique car one of my sons wanted to restore. After several threats of fines, etc. I let it go for $20 because I could not take on another fight, along with the I.R.S. wanting every cent I spend to get this into court,of our own money,so they can turn around and funnel into more Asbestos pipes, pollution and tyranny.

Every time my husband gets a job someone calls up and asks where is he working so he works very briefly and I work for no pay whatsoever.

A heliocopter dropped a corrosive substance on my roof. Rain took most of it off but there are a few leaks in my roof now from something.

The first day out with our petition to move the pump a neighbor told me that the entire area was going to be razed and it meant burned and bulldozed away as condos were planned for even where my home is. I went to the Sewer Authority meeting and told everyone there,what I was told. The

reaction was surprising, no one there denied it. The Chairman of the Sewer Commission, Joe McKeever, said, "Kay, they're not going to burn your house. You are one of our best taxpayers." Several months later Joe McKeever resigned.

The Chief Engineer resigned, Ralph Carr, and purchasing Agent, Treasurer, and several more, in rapid succession.

Against our City Charter, Mayor Joseph Walsh hired a man from Providence Mr. Cimini, to put the sewer pump on our clean cove. Mr. Cimini got sick and Lloyd Sherman took his place, from N. Kingston. He put the contested pump in the ground during the 4½ hours that we spent in Judge Francis Boyle's chambers in Providence U.S. District Court. When leaving home, the site was deserted. On return, a truck and crane were on the site and the pre-fab pump was in the ground.

We had 450 people at a rally on that site a week previously with Congressman

Edward Beard, who tried to get the Army Corps of Engineers to justify their actions in this cove, since 1977. They said they had nothing to do with it, and put all the blame on the EPA, and sent us a letter to that effect.

But it was the COE that O.K.ed this sewer pump (Item 23 of Exhibits) and has continually falsified this cove as unnavigable, whereas, there has always been a channel and small boat club of the neighborhood people limited to approx. 65 members because of lack of space to put boats. The boats are little and no one lives on them. It is not a commercial venture.

The COE has had thousands of tons of sand put on our City Park Beach and among the trees, suffocating the tree roots and the grass. This type of action has been going on for 6 years and gradually filling and blocking the channel. They also intend to put a breakwater <u>inside</u> the cove to divert water from sand, to homes on both sides

of this intended breakwater. Outside the cove, to divert a tidal wave would be helpful, especially since the contested sewer lies right in the path of hurricane destruction. But they said they had no money to protect that, after putting it in the V Zone (Velocity risk base floodplain). Everything built there has been destroyed in the past.

As my neighbor predicted 6 houses were burned, one a duplex, and were bulldozed away. All in this block. June 19, 1981, my tent was stolen from my front lot. The following Friday night, June 25th, across my yard came 2 strange men and one had a paper bag containing a jug. The other had 2 brand new 2 by 4's and they were bolted together with 4 new bolts. I was on my porch with the bamboo shade down. I asked them to get out of my yard. They advanced to my porch steps. I ran down the steps and was about 1 foot from them. By that time a neighbor boy was at my side on his

bike. Something was just about to happen to me when I heard myself saying, "There is a 44 Magnum aimed right at you". They looked at the porch shades. They couldn't see through them. Without saying a word they went down the street. I called the police and some neighbors. I was told that they had gotten out of a red truck above Brush Neck Av. and one was carrying a paper bag and had a plaid jacket on and they went down behind their waterfront lots and disappeared walking south, another lady said she saw them pour gasoline into a jug and put it in a bag. I told the police and the fire marshall.

There have been no fires in this block since then.

My husband had only gone to the store and away 10 minutes when all this happened. They thought no one was home,and I think the 2 by 4's were to push through my porch screens, as they were the length of my screens approx.7 feet.

These are discriminating actions against Petitioner and her Neighbors.

She has been the victim of 3 robberies, 2 break-ins, weird phone calls, and her garden and trees under constant attack. A city snow plow dug up grass and loam on both sides of street in front of Petitioner's home and hit garden gate with the plow blade. This gate was only up 4 months.

This is happening because everyone loves my garden and compliments me on it. My weeping willow has been cut with an infected saw and now my largest tree is dying of galls. Petitioner took pictures of men cutting tree and hopefully can do something about that, when this important issue is remedied. The Respondents want everything to look bad around here.

Representative Kevin McCarthy signed our Complaint into Superior Court and has been denied work and vilified. He became ill, lost the election, been arrested, been set-up, and threatened to be dis-

barred, suspended and sent to a mental institution.

Redistricted right at the corner of her street and put with the polluted Old Warwick Cove, though Petitioner lives on the waterfront of the clean, Brush Neck Cove side. Petitioner now has "Taxation without Representation". The only one we could get any response from was our Representative, and now we were cut off from voting for him. Democratic Chairman, Rocco Quattrochi, said he went by geographic locations. He said this on a T.V. show.

(4) The enumeration of specific forms of prohibited discrimination in this paragraph does not limit the generality of the prohibition in paragraph (a) of this section. (CFR Title 18 ch.VI Sec.705.4)

Petitioner believes this means every one has equal rights and civil rights.

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CFR Title 18, Ch.VI--Water Resources

Sec.714.310 Public Involvement.

(b)Public involvement in EQ evaluation is required for the following reasons;

(1)First,the Public is the basic source of knowledge and opinions that are needed to make the process work. Such knowledge and opinions are especially critical in determining public recognition and concerns.(see Sec.714.411, 714.412, 714.433)

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CFR Title 33. Ch.II--Corps of Engineers

Appendix D of Part 230.6

Note; Even if an EA or EIS is not legally mandated for any Federal action falling within one of the following "categorical exclusions", that fact does not exempt a any Federal action from procedural or substantive compliance with any other Federal law. For example, compliance with the Clean Water Act is always mandatory.

c. Sewer pumping plants and appurtenant facilities.

240.6 The Executive Order has an objective,the avoidance,to the extent possible, of long and short term adverse impacts associated with the occupancy and modification of the base floodplain wherever there is a practicable alternative. Under

the Order, the Corps is required to provide leadership and take action to:

(a) Avoid development in the base floodplain unless it is the only practicable alternative;

(b) Reduce the hazard and risk associated with floods;

(c) Minimize the impact of floods on human safety, health and welfare; and

(d) Restore and preserve the natural and benefical values of the base floodplain. (See 240.5, 240.7, 240.14)

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Petitioner has requested compliance with the E.O. 11988, since 1978, and has submitted the Federal Register 6030, Floodplain Guidelines, Feb. 10, 1978, for implementing this Executive Order, into every court, as part of our documentation.

The Corps has reneged on it's responsibility to protect the people living in this Velocity wind, hurricane high-risk, base floodplain and to save this last clean water cove. Inquiries from our previous Rep. Edward Beard and lawyers to the COE SHOW A TOTAL DISREGARD FOR THE

CLEAN WATER ACT AND FLOODPLAIN PROTECTION.

The COE has been driving around here for over 5 years. They sent Petitioner a letter earlier then that asking if they could use my waterfront lots as a storage area for their gear, trucks or whatever. This was a thoughtless request on their part, with vacant lots on every side containing only foundations of hurricane victims' homes, that have long been abandoned, they decided they wanted to use the only waterfront garden, which is fenced in and has hundreds of flowers and many flowering trees, a garden swing and bird bath and lawn. Hundreds of people walk by and compliment it and ask to take pictures there. The former Mayor Eugene McCaffery said he rode by and saw a veritable park that I had made here.

The COE has been on a Search and Destroy mission ever since. A reservoir of sewage on one side and mountains of sand at City

Park, on the beach and piled up between the trees and hay bales scattered, helter skelter, on the beach and in the water.

Petitioner's home and garden have been under siege, dust and dirt from the sewer pipe digging for 10 months, in front of my home, smothered the leaves and 4 trees, a mountain ash, a red bud, a pine and a peach tree and over half of my roses died. I had over 50 rose bushes. I plant more and mend broken branches. A week ago a yellow tower truck sped by, on the wrong side, and took 3 of my weeping willow branches and left them broken in the street.

One of these trees alone is worth more than $20. Yet, the lower court assumed Petitioner had no equity in this case to merit a jury trial. Petitioner has cashed in 2 of her saving certificates of $1,000 each just for the Preliminary Injunction into U.S. Supreme Court No. 80-1122.

Petitioner answered the attempt to remove from Jury-Trial, in a 7 page Rebuttal

submitted into U.S. District Court 6 days after receiving paper of Respondents attempt to dismiss case on res judicata from Providence Superior Court where the CLEAN COVE COMMITTEE,Inc. had gone for a Preliminary Injunction and a Judicial Review.

Armando Monaco II, who was supposed to present our case of the falsified permit and the degrading of clean water which would close our cove to the activities it now enjoyed, instead took the same line as the Respondents; that the only danger would be in construction and haybales would take care of that. Someone is pushing haybales around here.

The Clean Cove Members were made to sit in the outside hall, Petitioner went down the side corridor and tried to go in with our alleged lawyer and the door was slammed in my face. The Presiding Justice let me go in and Judge McKenzie told me to shut up,when I raised my hand and Dr. Richard J. Benoit,Ph.D. was told to go home by Mr.

Monaco, he wasn't needed. Mr. Monaco told Petitioner, he was going to use Dr. Benoit Expert Testimony as his own oral argument. Armando Monaco II was throwing the case and didn't need Expert Testimony for that. This entire travesty of justice as written in Rebuttal and Judge's statement are entered as Exhibits 21, and 32.

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The Constitution of the United States triply guarantees a trial by a jury of ones peers.

The Respondents have, knowingly, falsified facts to get a permit, and money, from the Water Pollution Control Act Fund and under 33 USC 1319 Sec. 309 Federal Enforcement and Judicial Relief is enumerated. Fines and penalties for fraudulent permits and misrepresentation of certification are classified as "effluent limitations or standards" under 33 USC 1365 Sec. 505. (f) Citizen's Suits.

When James Spaulding and then Gail Chumura signed falsified documents, the first thing to do was to get to these people and get them to rectify their errors. James Spaulding was Chief of Water Pollution Control in March of 1978. He told me he would get the report, in his office, and he came back reading it. He took this survey report of our cove and he put it in his top desk draw and locked it. He stared at me and closed the meeting. Petitioner could have been aggressive and demanded a copy of the report under the Freedom of Information Act, but she hoped that, now that they both knew about the report, that he would right the wrong he had done. He did not. At the State-Wide Planning Board he saw the mob of people, all angry and all realizing they were being done in by the bureaucracy. He told some he had a diploma in something. He was followed to the steps and asked if it was one of those diplomas that you mail away for. He left the agency

leaving his false report for us.

James Fester took his place, and we had a big meeting in Warwick, at Knight Campus. We had maps, charts, experts, a large crowd including a long table with over 30 shellfishermen. Mr. Fester said that meeting was about Portsmouth and a Beach we had never heard of. The people said we are all from Warwick and are here to discuss the planned sewer site. Mr. Fester said that was all taken care of by the past Chief, he wanted to get on to new programs. A man stood up and said, "Am I to think you will now go to Little Compton and discuss our problems with about as much intelligence as we can discuss theirs?"

Ron Marsella, a signator of our petition who lives in Buttonwoods and, also, President of the program to revitalize Providence and move the train tracks, told Mr. Fester that the elevation was higher at the tip of Oakland Beach and the lowest was at a city owned area, out of the base

Floodplain,Velocity wind area and off our clean cove. Mr. Fester agreed with him as they all looked at the elevation map that one of the DEM staff had put up. So it was agreed that the thousands allegedly spent to find the lowest point had been a great waste of the taxpayers money.

But what was anyone going to do about it? No one did anything. Even the people that called and wrote Gov. Garrahy got nowhere. Petitioner was told, "They are all making big money on it. They are making money on pollution and they are not going to stop it. You will have to go outside the state to get any justice."

Gail Chumura signed the same report of our cove, saying it was not the required setback from the water. But she left the erroneous grade of water and usage intact. The CWA hinge on this important criteria. When asked about this, Ms Chumura said, thought she was in Old Warwick Cove, and she didn't have time to rectify her mis-

take as she was going on a long vacation. She has been rewarded for her mistake by a position at CRMC, in Providence.

Dennis H. Esposito is a $60 an hour lobbyist, for the sewering combines, so it is a definite conflict-of-interest for him to be the lawyer for the CRMC, because sewage is our major cause of pollution into the water, with over 95 sewage overflows from sewer appurtenances in this small state. So there is no one representing CRMC's purpose of "preserving and protecting the coastline" except your Petitioner.

This case was started because of the sewer pump site on our clean water by the political profiteers for the service of their planned condos, and they ignored the laws and the Civil and Constitutional Rights of the residents and taxpayers of this entire area surrounding Brush Neck and Buttonwoods Cove and our Public Park.

Asbestos water and sewer pipes that were pointed out by many, including CRMC,

and the collusion of the politicians and their appointees, that has proven detrimental to Petitioner's health,home,garden, clean water,clean air,equal justice under the law, and her Constitutional and Civil Rights, are the reasons for this suit.

Wherefore, Petitioner prays for judgment against the Respondents as follows;

1. That the Respondents,and all persons acting by,through or under the Respondents or by their appointments,in their represented status as officers or directors of said State,City,and,or,Council, be restrained and enjoined from siting a sewer pumping station on,at,or near Brush Neck and Buttonwoods Cove, specifically between light poles #5 and #6 on Suburban Parkway at the corner of Sea View Drive,within 55 ft. of a salt marsh and 75 ft. from "SA" quality water,in the base floodplain,and in a V 10, Velocity wind,high-risk hurricane zone.

2. That the Respondents,and all the

above said appointees, officers,or directors, be restrained and enjoined from the burying of a hazardous material, specifically asbestos in our ground water,and the use of this carcinogenic material be banned from all water and sewer pipe material henceforth, and all such hazardous material be removed,as it was put here against our will and without our knowledge, and depriving us of clean drinking water.

3. That the Petitioner prays for a judicial review and all other relief which this Honorable Court may deem fit to award.

4. That the Petitioner be awarded attorney's fees and costs for bringing said action.

Catherine Elizabeth Schwarz
CATHERINE ELIZABETH SCHWARZ
CLEAN COVE COMMITTEE, Inc.Pres.
Pro se (as, and for,herself)

Subscribed and sworn to before me on this day 3rd of June, 1983.

Jacqueline Torres-Greer
My Commission Expires
June 30, 1986

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APPENDIX

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APPENDIX

U.S.COURT OF APPEALS FOR THE FIRST CIRCUIT

No. 82-1534

CATHERINE E. SCHWARZ,
Plaintiff, Appellant

vs.

COASTAL RESOURCES MANAGEMENT,ET AL.,
Defendants, Appellees.

APPEAL FROM THE U.S. DISTRICT COURT

FOR THE DISTRICT OF RHODE ISLAND

Honorable Francis J. Boyle,
U.S. District Judge

Before Coffin, Chief Judge,
Campbell and Breyer, Circuit Judges.

January 26, 1983

Per Curiam. This appeal is taken from the dismissal of Appellant's complaint seeking a permanent injunction against the installation of a sewage pumping facility. In an earlier appeal we summarily affirmed the denial of her request for a preliminary injunction. The dismissal of the com-

plaint was based on two grounds.First,that the court lacked subject matter jurisdiction.Second,that the action was barred by the doctrine of res judicata since the appellant claims subject matter jurisdiction based on several laws which do not provide for a civil action.[1] Indeed the only federal provision cited which might provide a basis is 33 USC Sec.1365.This authorizes private citizens to bring suits on their own behalf in three instances.First,against any person alleged to be in violation of an effluent limitation or standard.Second,against any person alleged to have violated an order regarding such a standard issued by the state or federal government.Third,against the Administrator of the Environmental Protection Agency where that person has failed to perform a non-discretionary act. Neither the second nor the third options apply here.Far from being in violation of any order, the proposed sewage pump has

been approved by both state and federal authorities. The third ground is not applicable because the suit does not name the Administrator.

The first ground fails as well. An "effluent limitation" is defined in 33 U.S.C. Sec.1362 (11) to mean a restriction against discharges of pollutant materials. It is unrefuted that the pump, in normal operation, will not discharge such materials. The theory of appellant's suit is that such discharges may take place through mechanical failures or under unusual weather conditions.

Such speculative allegations are insufficient to support a suit under 33 U.S.C. Sec. 1365. The statutory structure reveals a clear intention to limit private citizen suits to the most serious violations of the Act -- those involving actual pollutant discharges. While the Act may bar other, less serious conduct, as the appellant alleges,

it does not provide jurisdiction for private suits in such cases.

Appellant's brief, read broadly, may be seen as claiming some violations of state law. To the extent that such claims are made we see no basis for federal jurisdiction and agree with the district court that they would be barred by the doctrine of res judicata in light of the earlier state litigation where they were or could have been raised. Lovely v. Laliberte, 498 F.2d 1261 (1st Cir.), cert. denied, 419 U.S. 1038 (1974).

The judgment of the district court is affirmed.

1. For instance, she points to 18 U.S.C. Sec. 241 and 242, criminal code sections which provide no basis for a private civil action; and 33 U.S.C. Sec. 1319(c), a criminal provision under the Water Pollution Control Act which also does not provide for a civil action.

U.S. DISTRICT COURT FOR DISTRICT OF R.I.

CATHERINE E. SCHWARZ	*	
	*	
VS.	*	C.A. NO.
	*	
COASTAL RESOURCES,ET AL.	*	80-0137

JUDGMENT

This matter came to be heard on May 25 1982 before District Court Judge Boyle. After hearing all Parties,it is hereby ORDERED,ADJUDGED AND DECREED:

This matter shall be dismissed in accordance with the findings and recommendations of the magistrate.

Entered; Francis J. Boyle, U.S.District
June 30, 1982 Judge

U.S.COURT OF APPEALS FOR THE FIRST CIRCIUT

Before Coffin,Chief Judge,
Campbell and Breyer, Circuit Judges.

Order of Court. Rehearing denied.

Entered; March 8, 1983

ERRORS OF BOTH LOWER COURTS

The lower courts have mentioned that citizens have rights but only to "an extent" in other words, we have rights, but not equal rights.

The Constitution of United States says we have equal rights. And equal justice under the laws.

The lower court erred when it mentions that Petitioner can only complain about pollution that is already going into water, whereas, the Clean Water Act is striving for total prevention of sewage appurtenances that bring sewage to the water, instead of away from the water, by granting more money for alternatives, and by identifying, classifying, and specifying the usage of each grade of water. This was done correctly by the R.I. Health Dept.

The Respondents falsified the permit and certification, thereby, allowing different usage for our cove which will degrade and destroy it for the usage it has

now with the highest grade of salt water.

33 USC 1315.Sec.305.(a)(3)identify specifically those navigable waters, the quality of which--

(A)is adequate to provide for the protection and propagation of a balanced population of shellfish,fish,and wildlife and allow recreational activities in and on the water;

33 USC 1281.Sec.201.(g)(2)fiscal year after June 30,1974 new pollution point sources have to obey CWA Sec.303. and CWA Sec.401.(2) whenever such a discharge may effect the quality of the waters. If the imposition of conditions cannot insure such compliance such agency shall not issue such a license or permit.

33 USC 1343. Sec. 402.(b)(1)(A) and (C)(i)(ii)Permits are terminated for obtaining a permit by misrepresentation,or failure to disclose fully all relevant facts.

33 USC 1365.Sec.505.(a) Any citizen may commence a civil action against any gov-

ernmental instrumentality or agency who is alleged to be in violation of (A) an effluent standard or limitation under this Act. (f) For purposes of this section, the term "effluent standard or limitation under this Act" means (1) effective July 1,1973, an unlawful act under subsection (a) of section 301 of this Act; (1311); (2) an effluent limitation or other limitation under sec.1311 or 1312 of this title; (3) standard of performance under sec.1316 of this title; (4) prohibition, effluent standard or pretreatment standards under sec.1317 of this title; (5) certification under sec.1341 of this title or (6) a permit or condition thereof issued under sec.1342 of this title, which is in effect under this chapter (including a requirement applicable by reason of sec.1323 of this title).

(g)For the purpose of this section the term "citizen" means a person or persons having an interest which is or may be ad-

versely affected.

The District Courts shall have jurisdiction, without regard to the controversy or the citizenship of the parties, to enforce such an effluent standard or limitation, or such an order, or to order the Administrator to perform such act or duty, as the case may be, and to apply any appropriate civil penalties under section 309 (d) of this Act. (or 1319 of this title)

(e) Nothing in this section shall restrict any right which any person (or class of persons) may have under any statute or common law to seek enforcement of any effluent standard or limitation or to seek any other relief (including relief against the Administrator or a State Agency).

June 30, 1948, c. 758, Title V, Sec. 505. as added Oct. 18, 1972, Pub.L. 92-500, Sec. 2, 86 Stat. 888.

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This entire Sec. 505. has been photocopied and underlined for emphasis where it explicitly concerns this court action, from "THE CLEAN WATER ACT SHOWING CHANGES

MADE BY THE 1977 AMENDMENTS, 95th Congress 1st Session, Committee Print, Printed for the use of the Senate Committee on Environment and Public Works, Serial No.95-12. It is entered in APPENDIX in U.S. Distict Court and U.S. Appeals Court for the First Circuit, as Item 12. It will be entered in U.S. Supreme Court in List of Exhibits.

1. Decision for Permit by CRMC.
2. Surveys by Health Dept. of both coves in question.
3. Map from R.I. Health Dept. showing closures.
4. Graph by C.E. Maguire reversing problem area.
5. R.I. Map and graph showing classiication of water and pollution.
6. Contract signed by Gov. J. Joseph Garrahy.
7. Contract signed by Joseph McKeever, Chairman of Warwick Sewer Authority.
8. Picture of house on exact site,one day after hurricane.
9. Picture of our cove and Buttonwoods City Park.
10. News clipping of Noel's plans to hook-up condos to pump.

11. News clipping raising the contracted price of sewers, further violating CWA, Sec. 201.(h)(3).

12. CWA Sec. 505. Citizen's Suits, underlining power of U.S. District Court and explanation of "limitations".

13. Civil Rights under Coastal Resources

14. Floodplain Guidelines, E.O. 11988 and E.O. 11990.

15. Water Resources and E.O. 11988.

16. Corps of Engineers and E.O. 11988.

17. Justice Dept. and E.O. 11988.

18. Expert Testimony; Dr. Richard Benoit, PhD

19. " " Robert D. Bowman

20. " " Richard Greenwood

21. Decision by Judge MacKenzie

22. C.A. in Disciplinary Court against Armando Monaco II.

23. News clipping of Final O.K. by COE.

24. Credentials of Expert Witnesses, 14 pg

25. Lists of Witnesses and Questions.

26. 4 pages on cases mentioned herein.

27. CWA Sec. 510.(1)(B).

28. CLEAN COVE COMMITTEE's original Complaint.

29. CLEAN COVE COMMITTEE's incorporation

30. Respondents in the news and Political Patronage ruled Unconstitutional.

31. Sewer pumping station damage 3 pg.

32. Objection to Remove From Jury-Trial and Rebuttal to "res judicata".

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The lower court stated that the sewer pump, in normal operations, will not discharge into our clean water, was unrefuted.

The above statement and sewer pump and its operation has always been refuted.

The contested sewer pump has already defiled and degraded clean water, with only a small percentage of hook-ups to it, and as new as it will ever get, this pump brought the fecal coliform count up to the danger zone in June and July of 1982 and I have D.E.M. notice of closure of most of Narragansett Bay and it's estuaries for June 8 to 22,1982, from approx. 95 other filth venders, sewage pumps and sewer appurtenances overflowing into the water. The Warwick Sewer Authority had tank trucks

down at the sewer pump site and long hose sucking out sewage filth that had leaked out of that sewer pump and into our clean water. Petitioner saw these trucks down at site with hoses dangling off the bridge for several days pumping out as much of the filth as they could,into the tank trucks. Of course,they couldn't get it all,that is why the wardens arrived with guns and started yelling at the children and their parents to dump the clams as the cove was now polluted.

Petitioner has a son who works for Hart Engineering and he took the specifications up to Boston, with the blueprints of this contested pump. The verdict of these very competant engineers and draftsmen is "that pump won't even hold out water, or hold it in" in other words, this sewer pump is a sieve. The pumps have been malfunctioning, ground water has been getting in since it was placed on that site so they had to keep the pumps going even

before sewage started to go into it.

Fred Hoernle, chief Engineer for the company who planned this entire fiasco, was the man who told my husband that, "Brush Neck and Buttonwoods Cove were the the overflow tanks." This was back in 1978 and we knew then exactly what would happen and it has already started.

There has been nothing speculative about Petitioner's research into this matter. The speculation has been coming from the profiteers and bureaucracies, and sad to say, the courts, so far.

The reason the certification and permit clauses are in the Citizen Suit's of the CWA is for just this reason, the patronage system has filled thousands of important, responsible jobs, with speculators. They speculate that if they ignore Petitioner long enough, she will go away. They speculate she is not competant enough to see obvious omittance of the most important parts of the Citizen Suit sec-

tion (f) which explains what "effluent standard and limitations"mean. That it most definitely means fraud in a permit, and misrepresentation in the certification process, are important provisos of the law.

To falsify a permit is very serious. How can clean water be protected if the permit and certification system is allowed to falsify documents? Why would anyone need to falsify a document for already polluted water?

The need to falsify came when the politicians wanted to bring sewage over to clean water and found they could not, because the usage for "SA" water is;

SWIMMING, SHELLFISHING, and FINFISHING...

Can you see sewage getting into these activities?

That is why usage has to be defined. And that is why the politicians changed the usage and the classification of our cove. And the COE said it was unnavigable because that created a loophole, where they

were not responsible for what happened.

They were here, very prominently, and they totally ignored the Floodplain laws and the public involvement of these laws.

Why ?

Because they did not want to let the public in on it, in the first place, and they knew the public did not want their cove destroyed and degraded, and the sewer pump on their clean water, depriving them of a nearby place to clam and to fish and swim, and they did not want their City Park and beach messed up with sand piles and haybales, and they did not want their channel choked up with sand, in the second place.

And when you have so many officials in this small area, making off they did not know what was going on, at first I thought they were dumb, then I realized how the paperwork was all changed and at the crucial places to get around the laws, and they are all lawyers, so collusion was more and

more evident. It is a big conspiracy to use our clean water cove for the dumping ground for the sewage from the Respondents planned condos. The condos were kept secret and land in escrow until we lost the Preliminary Injunction in court and then the planned condos came out in the news papers. The planned hook-up to the sewer pump was in the news article, too. It was not news to me, as all this had been told to me in March, 1978. Ex-gov. Phil Noel had his hand picked Political Appointees just did what he told them. They did not have to know anything about the environment or housing, etc. Just okay the projects, make it look like several different agencies went over everything, got the Public's opinion and complied with the laws. It would be cheaper to hire robots and stick pens in their hands.

The people in these Agencies are not *robots and* when they found out what was really going on, Petitioner got the doc-

uments and laws she needed to win this case. By phone,and by letter,and in person, Petitioner received more information than she could absorb. But she wrote these important facts down and every day spent time looking up these laws and the procedures and the constant changes that Amendments bring. It has been a test of Petitioner's intelligence and time, and because the Respondents have constantly attacked Petitioner standing and even wrote into the record of first Public Hearing that she was incompetent, she has been told she should find a place in the record to let Respondents know that their Petitioner has a genius I.Q.

The only other distasteful remark to Petitioner came from a person that has gotten over $150,000 to help clean up the environment, and so should know better.

The remark was, "She is only doing all this work because the pump is being built in her backyard". This remark is

not true. It is not being built in my backyard. It was built,literally speaking, in Eugene Montecalvo's backyard and he died of a heart attack from all the aggravation. Furthermore, a person that got so much government money for water pollution control should know the Clean Water Act,backward and forward,and especially CITIZEN SUITS, because paragraph (g) For the purpose of this section the term "citizen" means a person or persons having an interest which is or may be adversely affected.

So this means if Petitioner did not live in the affected area and was not adversely affected then Petitioner could not bring a Citizen Suit into court.

To have clean water turned into a cesspool right in front of your home, is definitely an adverse condition. To have a manhole cover put in front of your porch and another at your back gate, is an adverse condition. Since all the filth comes

out of these manhole covers when the pump floods out or gets blocked up.

Instead of clean clear salt air that for the 37 years that Petitioner has lived here, that has been such a blessing, the Southeast wind brings a horrendous stench that could turn your stomach. This is definitely an adverse condition.

Forced to pay sewer assessments of footage, and any and all the other devises that the Public here are complaining of, including $25 more in rent each month for the poorest of people, when many could barely pay what they had to pay in rent before this.

When a 15¢ yeast cake once a year and the careful disposal of grease and bleach other than down the drain will keep a cesspool or other septic system in good working order and never need repairing if made of granite stone, in the first place. And it will keep the beaches and quiet clean coves in good working order ,too,

doing their job of a natural fish hatchery and haven for wildlife that any clean body of water is.

Brush Neck and Buttonwoods Cove has snowy egrets, sandpipers, herons, kingfishers, many kinds of sea gulls, and ducks. It has thousands of schools of fish that spawn here and clams. It has our city Public Park and beachfront.

We had at least 12 swans. But the campaign to degrade and destroy our cove had our lovely swans as their first victims.

Two were found with their necks strangled. A truck with a lone gunman shot and killed several and then disappeared back to wherever he came from. None have been here for the past 2 years.

The Asbestos water pipes that have forced us to buy bottled water, filters and pay 2 water bills.

The Asbestos sewer pipes that bring fibers of this carcinogenic out to our clam beds and our sea food chain.

These are all adverse conditions that are affecting, not only your Petitioner, but the entire area around our cove and the residents that make their homes here and the visitors to our Public Park.

****

There has been a continual dialogue with the Administrator of EPA Boston and also a notification of the court action mailed to William Adams. It was returned with a stamp saying address unknown or a similar stamp. Petitioner then hand delivered the letter to Mr. Adams, as a meeting had been scheduled for the same week. This was in January of 1979 and we did get a Public Hearing but never a Judicial Review of the documents, so the errors could have been rectified at an early date, but were not.

Also, there have been 3 Administrators at EPA Boston since we have been on this case. William Adams, who possibly tried to help us, but was discouraged from help-

ing us by our lawyer.

Leslie Carothers, Acting Administrator was sent the falsified Decision for Permit and this was through the interceding of Congresswoman Claudine Schneider's office.

Leslie Carothers' answer ignored the important changes of water quality and obvious new proliferation (which Respondents had always denied and later ignored when it came out in the news papers) only the landscaping took 3/4 's of the answer.

Lester Sutton has never answered mail. He was Chief of Water Pollution Control in 1978, at Boston EPA, so he was the one who could nip this atrocity in the bud. But he did nothing. We never saw him or received any answers to our letters. We couldn't get him on the phone. Many of our Members tried to get in touch with him, and never reached him. He was totally useless at his job of controlling water pollution, so they made him the Administrator of EPA, Boston. Thankfully, he has been fired now by the

new Administrator of EPA, William Ruckelshaus. It was the best news Petitioner has heard all year. And that Inspector General Matthew Nowick is out, was the next best. His idea of an investigation was to call up Lester Sutton and get a reiteration of the lies, then call me back and tell me he has talked to his "experts" and they knew what they were doing. Petitioner told him, she knew what Lester Sutton and Guy St. Andre were doing, too, and it had nothing to do with protecting the environment. I said, "Mr. Nowick, if you were investigating a bank robbery, you would ask the thief if he did it. When the thief said he did not, you would say you had investigated the robbery."

Petitioner had notified all concerned about the need for a judicial review and within the time alloted, 30 days after the Final Decision by CRMC. We will try and get in touch with the new Administrator. Since it may take awhile, this case will

have to be entered before that happens. We have already sent him a 4 page letter.

****

As to naming an Administrator to this suit because of the temporary and capricious nature of these positions of Respondents, the advice was given to Petitioner to write out the Defendants (Respondents) in a legal way that would catch them all in the same net, thus;

"The Defendants, and all persons acting by, through or under the Defendants or by their appointments, in their represented status as officers or directors of said Council, State, and, or, City, be restrained and enjoined----"

This would include the COE because the appointment was made by the Warwick Sewer Authority, as Exhibit Item 23. shows.

That both these agencies, EPA and COE have had a big hand in this project along with the politicians, is evident, but the total lack of their responsibility to the Floodplain laws and Clean Water Act, and

the residents of this base Floodplain,who are being victimized by their actions, is also, very evident.

CFR. Title 44 Ch.1 FEMA. Sec.60.6 (3)

Variances shall not be issued if they will result in increased flood heights, additional threats to public safety,extraordinary public expense,create nuisances cause fraud on or victimization of the public,or conflict with local laws or ordinances. (See Sec.60.3,60.4,and 60.5)

Sec. 60.22

(1)Permit only that development of flood-prone areas which (i)is appropriate in light of the probability of flood damage and the need to reduce flood losses (ii) an acceptable social and economic use of the land in relation to the hazards involved,and (iii)does not increase the danger to human life;

(2)Prohibit nonessential or improper installation of public utilities and public facilities in flood-prone areas.(See Sec.

60.11, 60.12, 60.13 and Part 9--Floodplain Management and Protection of Wetlands).

Coastal Zone Management Act of 1972.

16 Sec. 1456 Ch.33 (f) Notwithstanding any provisions of this chapter,nothing in this chapter shall in any way affect any requirement (1)established by the Federal Water Pollution Control Act,as amended,or the Clean Air Act,as amended,or (2) established by the Federal Government or by any state or local government pursuant to such Acts. Such requirements shall be incorporated in any program developed pursuant to this chapter and shall be the water pollution control and air pollution control requirements applicable to such program.

There are 16 pgs. on regulating Asbestos at the source of manufacturing because it is so detrimental to our health. Yet, Respondents are bringing it into the state bt the ton and burying it in our ground water,using it for water and sewer pipes.

Purpose. The citizens' suit provision of this section was designed to supplement

and expedite administrative action to abate violations of this chapter; recourse to the courts is appropriate only when the administrative action taken is less than adequate. Com.of Mass. v. U.S. Veterans Administration, C.A. Mass.1976, 541 F.2d 119.

Private suits in the United States district courts based upon alleged violations of "effluent limitations" of this chapter are provided for by this section as an additional means of enforcement. American Frozen Food Institute v. Train,1976, 539 F. 2d 107, 176 U.S. App.D.C. 105.

The inclusion in this chapter of this section providing for citizen suits indicates that Congress specifically intended that the interests of private citizens be protected by this chapter. Loveladies Property Owners Ass'n, Inc. v. Raab, D.C.N.J. 1975, 430 F. Supp. 276, affirmed 547 F.2d 1162.

It was congressional intent to supplement administrative enforcement of this chapter with enforcement by citizen suits, and also to put strong reliance on administrative enforcement, generally allowing citizen enforcement only after Administrator has had opportunity to bring his po-

wers of enforcement to bear on the polluter. Save Our Sound Fisheries Ass'n v. Callaway, D.C.R.I.1977,429 F. Supp.1136

Special citizen suits provision of this section was intended to encourage citizen participation in the enforcement of chapter. State of Minn.1975, 401 F.

4.Navigable Waters. Legal definition of "navigable waters" or "waters of the United States", within scope of this chapter includes any waterway within United States and also normally dry arroyos through which water may flow, where such waters will ultimately end up in public waters such as a river or a stream, tributary to a river or stream, lake, reservoir, bay, gulf, sea or ocean either within or adjacent to the United States. U.S. v. Phelps Dodge Corp., D.C.Ariz.1975, 391 F. Supp. 1181.

Subsec. (c)(1) of this section applies only to citizen suits against a violator and is not applicable to citizen suit's against the Administrator for failure to perform a nondiscretionary act or duty;

14. STANDING TO SUE. Even if the Environmental Protection Agency would decline to prosecute in case of an unavoidable excu-

rsion with respect to party holding effluent permit, any citizen would be free to commence an enforcement action which would not be blocked even though the Agency believed suit should not go forward. Marathon Oil Co. v. Environmental Protection Agency, C.A.9, 1977, 564 F.2d 1253.

Allegations of associations of taxpayers and property owners in Long Beach Island area that their members were directly affected" by ecological system of Barnegat Bay, that they enjoyed the areas aesthetic benefits that they used the area for recreational activities, and that the value of the properties they owned in the area would be adversely affected by the deterioration in the environmental quality of the bay sufficient to confer standing under this section. Loveladies Property Owners Ass'n, Inc. v. Raab, D.C.N.J. 1975, 430 F. Supp. 276, affirmed 547 F.2d 1162.

Community groups whose members were citizens of D.C. and Montgomery County, Md., two jurisdictions which are contiguous to flow of Potomac, had standing to maintain action for declaratory and injunctive relief ordering the defendats to refrain from authorizing further sewer hook-

up permits which would result in sewage discharges affecting the water quality of the Potomac, as against contention that plaintiffs had no standing because they failed to allege that they used it in any way, or purpose that would be adversely affected by defendants actions. Montgomery Environmental Coalition v. Fri. D.C.D.C. 1973, 366 F.Supp.261.

Individuals and citizens associations suing for injunctive relief restraining defendants from granting permits for sewer hookups into sewer system and requiring defendants to revoke certain existing hookup permits would be permitted to amend complaint to add count asserting that the alleged discharges into the stream system constituted an imminent and substantial endangerment to the health of persons under section 1364 of this title. Committee for Consideration of Jones Falls Sewage System v. Train, D.C.Md.1974, 375 F.Supp. 1148, affirmed 539 F.2d 1006.

Petitioner has submitted other actions relevant to this case in 80-1479, US App. 1st Cct. and 80-1122 US Supreme Ct.
CERTIFICATION: Copies sent to Thomas Mullaney,75 Weybosset St.,Dennis H. Esposito, 72 S. Main St.,Daniel Schatz,72 Pine St. all of Prov. R.I. 02903.